

ORIGINAL

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WASHINGTON, D.C. 20036

ORIGINAL

EX PARTE OR LATE FILED

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July 30, 1999

EX PARTE

Magalie R. Salas, Secretary
Federal Communications Commission
The Portals Building
445 12th Street, SW
TW-A325
Washington, D.C. 20554

RECEIVED
JUL 30 1999
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CS Docket No. 95-184; MM Docket No. 92-260;
WT Docket No. 99-217; CC Docket No. 96-98

Dear Ms. Salas:

On July 29, 1999, Michael Katzenstein of OpTel, Inc. ("OpTel"), along with the undersigned, met with Eloise Gore, Nancy Stevenson, and Carl Kandustsch of the Cable Services Bureau regarding the above-referenced proceedings. The discussion involved the status and inter-relationship of these various proceedings. Also, OpTel left the attached letter, which also was mailed to Deborah Lathan, Chief of the Cable Services Bureau (without attachments), with the CSB staff.

Sincerely,



W. Kenneth Ferree
Attorney for OpTel, Inc.

cc: Deborah Lathan
Eloise Gore
Carl Kandustsch
Nancy Stevenson

No. of Copies rec'd
List ABCDE

0+1



July 29, 1999

Ms. Deborah A. Lathan
Chief, Cable Services Bureau
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

Re: Anticompetitive Behavior Of Charter Communications Entertainment II, LLC

Dear Ms. Lathan:

On behalf of OpTel, Inc. ("OpTel"), and in connection with your review of competitive conditions in the multichannel television industry, I would like to bring to your attention the actions of Charter Communications Entertainment II, LLC ("Charter") in connection with OpTel's recent attempt to provide multichannel video services to a California apartment complex. Charter's conduct in this matter is indicative of the anticompetitive behavior that continues to be directed against competitive MVPDs and property owners as they attempt to bring competitive video services to multi-dwelling unit ("MDU") residents.

Franchised cable operators have had a long history of using the existing inside wiring in MDUs to thwart entry by competitive MVPDs. The Commission sought to level the competitive field when it adopted a procedure for the disposition of cable television inside wiring in MDUs.¹ Pursuant to that procedure, the incumbent operator must, upon notice of a transition of the property to a new service provider, elect to sell, remove, or abandon the cable inside wiring. Many incumbent franchised cable operators, however, have sought to frustrate the application of these rules at every turn. Charter's actions in this regard are typical.

By way of background, OpTel and the owner of Falls Creek Apartments in Alta Loma, California, entered into an agreement for OpTel to provide multichannel video

¹ See 47 C.F.R. § 76.804.

services to Falls Creek Apartments. The apartment complex is served by American Cable Entertainment Company, which recently was acquired by Charter and is referred to herein, for the sake of simplicity, as "Charter." In response to notices from the owner and OpTel that the owner had contracted for OpTel to provide multichannel video services and granted OpTel the right to use the existing wiring on the property, Charter asserted that it owns all existing wiring and equipment on the premises and that it has a permanent right to provide cable television services to the apartment complex.

When the owner insisted that Charter provide evidence of its claimed rights, Charter responded with a letter to the owner in which it both threatened legal action against the owner and, "in order to avoid the costs and expenses of prolonged litigation," invited the owner to enter into a new, long-term service agreement with Charter in exchange for "substantial compensation" (see enclosed letter dated March 11, 1999).

In an effort to bring about an orderly transition of cable service, and even though Charter can produce no evidence that it owns the inside wiring at the Falls Creek Apartments, OpTel and the owner each sent notices to Charter invoking the procedural mechanisms of the FCC's inside wiring rules (which apply when the incumbent operator does, in fact, own the inside wiring). In response, Charter argued that it does not have to comply with the FCC's rules because it claims a permanent right to provide cable service to the property.

Charter has advanced many specious theories in support of this claim, including: (1) that it holds a cable television franchise, which, in combination with Section 621(a)(2) of the Communications Act of 1934, gives it the right to use easements granted to utilities for utility service — an argument that has been rejected by every court that has addressed it, including the 9th Circuit;² (2) that it has somehow acquired an "irrevocable license" to serve the property — a position for which there is no legal basis; and (3) that it has an agreement with a utility to use the utility's easements — which, if true, involves an unauthorized and, as discussed in a recent FCC Notice of Proposed Rulemaking, an unlawful expansion of the utility's easements under current law.³

Charter now has filed a lawsuit against OpTel and the owner of the Falls Creek Apartments in which Charter continues to advance these arguments in an effort to

² Century Southwest Cable Television, Inc. v. CIIF Associates, 33 F.3d 1068 (9th Cir. 1994).


³ See Promotion of Competitive Networks, WT Docket 99-217 (rel. July 7, 1999) ¶¶ 44-45 (seeking comment on the ramifications of allowing/ requiring utilities to make easements on private property available to third parties).

Ms. Deborah A. Lathan
July 29, 1999
Page 3

thwart the application of the FCC's inside wiring rules. Charter's conduct in this proceeding is by no means an isolated incident. OpTel and other MVPDs face similar anticompetitive assaults from incumbent franchised cable television operators across the country. These assaults obstruct OpTel's ability to deliver competitive services and cause both OpTel and owners of MDUs to incur substantial legal expenses to defend themselves.

As you consider further action to promote the development of competition to the incumbent franchised cable operators, I ask that you take note of Charter's conduct in this matter.

Respectfully



Michael E. Katzenstein
Vice-President and General Counsel
OpTel, Inc.

Encl.

cc: Eloise Gore



March 4, 1999

***Certified Mail No. Z 371 331 224,
Return Receipt Requested;
Copy via Facsimile***

Day L. Patterson, Esq.
Senior Vice President and General Counsel
American Cable Entertainment
Four Landmark Square, Suite 302
Stamford, Connecticut 06901

Re: Falls Creek Apartments, 10655 Lemon Avenue, Alta Loma, California

Dear Mr. Patterson:

I am responding to your letter dated February 12, 1999, to Benjamin G. Miller of TVMAX Telecommunications, Inc., d/b/a OpTel ("OpTel"). Your letter states that American Cable Entertainment Company ("ACEC") has the legal right to provide cable television services to the referenced property and that ACEC owns the cable television wiring at and within that property. By Benjamin Miller's letter to ACEC dated February 3, 1999, your company was notified that the property owner has advised OpTel that no agreement exists with your company concerning the provision of cable television services to the Property. The owner further advised that it owns all interior and all external underground cable television wiring and conduit located at the Property and has authorized OpTel to use the same. By telephone, on February 17, 1999, I again advised you of the owner's representations to OpTel. I asked you to provide a copy of any written agreement that evidences the rights in favor of ACEC claimed by your letter of February 12, 1999. You declined to confirm or deny the existence of any agreement or provide a copy of any agreement without the approval of the property owner.

Enclosed please find a letter dated March 2, 1999 from Prince Properties Corporation, the current owner of Falls Creek Apartments, acknowledging OpTel's authority to act as its agent and directing ACEC to release to OpTel all agreements, records and other information that ACEC may possess regarding Falls Creek Apartments.

If ACEC has the rights that it claims, then we would appreciate your providing us with a copy of the written agreement evidencing same. If ACEC cannot or will not provide such evidence of its claimed rights, OpTel must rely upon the property owner's representations and proceed to fulfill its obligations under its agreement with the owner. Accordingly,

Day L. Patterson, Esq.
American Cable Entertainment
March 4, 1999
Page 2 ---

unless you provide OpTel with a copy of an agreement that evidences the rights claimed by your company within ten (10) days from the date of this letter, OpTel intends, in complete reliance upon the property owner's representations and your failure to provide such evidence, to proceed forward to construct its systems to provide exclusive cable television services to the property. In doing so, OpTel intends to use exclusively the existing cable television wiring and conduit located on the property (excluding any active or passive components of the current cable system).

Sincerely,



Scott V. Williams
Director and Assistant General Counsel

SVW:jmd
Enclosure

cc: Mike Mariott
Benjamin G. Miller



PRINCE PROPERTIES CORPORATION

10563 Civic Center Drive, Suite 200, Rancho Cucamonga, CA 91730 Tel: (909)481-4381 Fax: (909)481-4387

 **PRESIDENT GROUP**

Via Facsimile

March 2, 1999

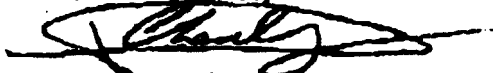
Mr. Day L. Paterson
Sr. Vice President and General Counsel
American Cable Entertainment
Four Landmark Square, Suite 302
Stamford, CT 06901

RE: Falls Creek Apartment Cable Service

To whom it may concern:

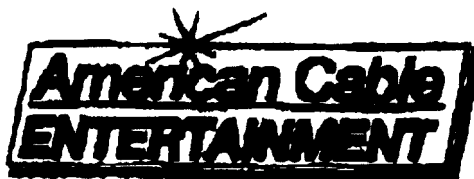
We are the current owner of Falls Creek Apartment, located at 10655 Lemon Ave., Alta Loma, CA 91797. The previous owner, Flatiron Property Corp., entered into a service agreement with OpTel for the cable services. Therefore, according to the agreement they have signed with OpTel, we have to authorize OpTel to act as our agent with respect to the cable services at the property. Please cooperate and coordinate on the orderly transition of services to OpTel at Falls Creek. And please release all agreements, records and information to OpTel that your company may possess regarding Falls Creek.

Sincerely yours,



Benjamin P. Chan
Director of Property Management

CC: Mr. Benjamin G. Miller, OpTel



March 11, 1999

BY U.P.S. (OVERNIGHT)

Prince Properties Corporation
Attn: Benjamin Chen
10555 Civic Center Drive, Suite 288
Rancho Cucamonga, CA 91730

Post-It Fax Note	7671	Date	3/19	Page	2
To	Mr. Benjamin Miller	From	Benjamin Chen		
Company		On			
Phone #		Phone #	909-481-6388 x107		
Fax #	949-474-0719	Fax #			

**RE: Cable Television Service to
Falls Creek Apartments Complex in
Alta Loma/Rancho Cucamonga, CA**

Gentlemen,

As you know, American Cable Entertainment Company, LLC ("ACEC") is currently providing - and is intent upon continuing to provide - cable television services to the residents of the Falls Creek apartments complex at 10555 Lemon Avenue (the "Property") in Alta Loma, CA, which Property you reportedly own.

We note that we have been informed by OpTel, a satellite master antenna television (SMATV) provider, that OpTel is intent upon effecting (i) the eviction of ACEC from the Property, (ii) the termination of ACEC's cable television services within the Property, (iii) the seizure by OpTel of ACEC's cable television wiring within the Property and (iv) the use by OpTel of ACEC's cable television wiring for the transmission and delivery of OpTel's SMATV service to the residents of the Property. For your reference, we enclose a copy of OpTel's March 4, 1999 letter to ACEC.

Please understand that it is and will continue to be ACEC's position that all of the cable television wiring and related items of cable television equipment presently located within the Property constitute trade fixtures owned by ACEC, the existence of which fixtures has been readily apparent and known to and accepted by each owner of the Property, and that ACEC has the legal right to continue to operate and maintain those trade fixtures within the Property under the specific provisions of the City of Rancho Cucamonga's cable television ordinance and ACEC's existing franchise agreement with that City and Section 621(a)(2) of the Cable Communications Policy Act of 1984, as amended to date.

While OpTel may seek to persuade you that it has a legal right to dispossess ACEC of the foregoing wiring that is owned by ACEC, and that OpTel would then have the further right to take possession of and use ACEC's wiring for OpTel's transmission of its competing SMATV service, be advised that ACEC is prepared to and will defend its right to continue to own, operate and maintain its cable wiring and related equipment and operations within the Property.

Prime Properties Corporation

Attn: Benjamin Chen

March 11, 1969

1970

In any event, in order to avoid the costs and expense of prolonged litigation, this will confirm that AACEC would welcome the opportunity to enter into a new, long-term service agreement with you - and that, if you are legally able to enter into such a long-term agreement with AACEC, then AACEC would be willing to grant substantial compensation to you thereby. Should you wish to discuss the possibility of entering into such a long-term service agreement with us and the compensation that we would pay you thereunder, please call AACEC's president and chief executive officer, Bruce A. Armstrong, at AACEC's offices in Stamford, CT (telephone 203-323-1100). For your reference in that regard, we enclose a copy of one of our standard form service agreements.

We note that our cable television system serving your Property in Rancho Cucamonga is scheduled to be sold to Paul Allen, the investor who co-founded Microsoft. This system is also slated to be upgraded so that it can commence implementing significantly enhanced services. Both ACBC and Paul Allen's company, Charter Communications, have made a commitment to the City of Rancho Cucamonga to upgrade the system to 750 MHz, hybrid fiber-coax technology, which will enable the system to provide significantly more analog channels, additional digital television channels, enhanced pay-per-view choices, high speed internet access, digital audio music channels, and other services. We are confident that our services to your Property will continue to be an important amenity to your residents and we look forward to continuing to serve both you and them.

In the interim, in order to enable ACBC better to assess how ACBC should proceed from a legal standpoint in order to protect its legal position within the Property other than by commencing litigation against both Palace Properties Corporation and OylTel, we respectfully request that you please have your legal counsel promptly telephone the undersigned, Day L. Patterson (ACBC's in-house counsel), who is fully familiar with the legal aspects of this matter.

Thank you for your and your legal counsel's prompt attention to the foregoing.

Kindred years

Das Pflaster

Day 1: Preparation

Sr. Vice President

THE GREAT COMET

cc: Bruce A. Armstrong
Hugh MacIsaac



March 30, 1999

Via U.S. Mail; Copy via Facsimile

Day L. Patterson, Esq.
Senior Vice President and General Counsel
American Cable Entertainment
Four Landmark Square, Suite 302
Stamford, Connecticut 06901

Re: Falls Creek Apartments, 10655 Lemon Avenue, Alta Loma, California (the
"Property")

Dear Mr. Patterson:

By the first and second paragraphs of your letter to me dated March 12, 1999, you advise that American Cable Entertainment Company ("ACEC") purchased DCA Cablevision's rights in the cable television equipment located at the Property and that ACEC desires to continue to provide cable service to the Property using that equipment. The only relevant issue regarding the cable television wiring, one that OpTel has asked ACEC to answer on several occasions, is whether ACEC possesses a written agreement enforceable against the current owner of the Property that evidences ACEC's continuing ownership of the cable television wiring. Absent ACEC's production of such evidence, OpTel intends, in complete reliance upon ACEC's failure to provide such evidence and the property owner's representations that no such agreement exists, to proceed to use exclusively the existing cable television wiring and conduit located on the Property for the provision of OpTel's services.

In the event, and only in the event, ACEC is able to produce a written agreement evidencing its continuing ownership of the cable television wiring, then this letter shall constitute a notice invoking the procedural mechanisms for ensuring an orderly transition of cable television home run wiring enacted by the Federal Communications Commission (the "FCC") (see FCC Rules, 47 C.F.R. §76.804 (1998) ("FCC Rules")). Accordingly, as agent with respect to cable television services for Prince Properties Corporation ("Owner"), the current owner of the Property, you are hereby notified that ACEC's access to the Property will be terminated on or after the date ninety (90) days after the date of this notice. As mandated by Section 76.804(a)(1) of the FCC Rules, ACEC must inform the undersigned, in writing, within thirty (30) days from the date of this notice of its election (i) to remove the home run wiring and restore the Property as required by the FCC Rules, (ii) to abandon and not disable the home run wiring at the end of the 90-day notice period,

Day L. Patterson, Esq.
American Cable Entertainment
March 30, 1999
Page 2

or (iii) to sell the home run wiring to Owner or OpTel at a price to be negotiated pursuant to the FCC Rules. Please be reminded that, pursuant to Section 76.804(a)(5) of the FCC Rules, each party has a good-faith obligation to cooperate to avoid disruption in service to subscribers to the extent possible. Again, this paragraph and the FCC Rules mentioned above shall apply only in the event ACEC immediately produces written evidence of its continuing ownership of the cable television wiring located at the Property.

The third paragraph of your March 12, 1999 letter asks OpTel to provide ACEC with evidence of OpTel's right to provide cable television services to the Property. While OpTel's rights are not relevant to the matters at issue, because OpTel believes in being honest and forthright with its customers and competitors, I have enclosed with this letter a copy of OpTel's Cable Television and Telephone Service Agreement pertaining to the Property. If ACEC likewise would be honest and forthright with respect to its rights relating to the Property, I believe we could quickly resolve this matter.

OpTel also received a copy of your March 11, 1999 letter to Owner (copy enclosed). OpTel is dismayed at the deceitful, bullying tactics displayed by your letter. Your letter, particularly the second and third paragraphs thereof, contain many intentional misstatements of fact and law. I would appreciate your letting OpTel's actions and statements speak for themselves. This situation is not made better by your gross mischaracterizations. You also claim that "ACEC has the legal right to continue to operate and maintain those trade fixtures within the Property under the specific provisions of the City of Rancho Cucamonga's cable television ordinance and ACEC's existing franchise agreement with the City and Section 621(a)(2) of the Cable Communications Policy Act of 1984, as amended to date." ACEC has not produced any contractual support for such rights, nor do the ordinance, franchise agreement or federal law that you cite provide those rights.

After spending a full page bullying the Owner, it is quite gracious of ACEC to "welcome the opportunity to enter into a new, long-term service agreement with [the Owner] . . .". Do you really believe that Owner or anyone else in their right mind would want to do further business with ACEC after the way ACEC has treated them? While I believe your tactics are transparent and your letter only further shoots ACEC in the foot, please be advised that further communication of any kind by ACEC to Owner regarding providing service to the Property in violation of OpTel's contractual rights, particularly communications offering "substantial compensation", will be viewed by OpTel as intentional interference with OpTel's contractual rights, for which OpTel will seek redress via immediate legal action.

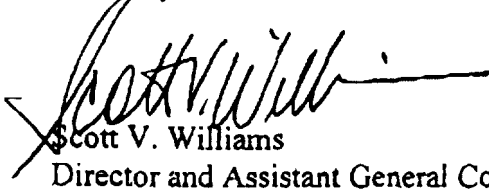
Rather than continuing on the present course, OpTel requests that ACEC instead thank Owner for its patronage and graciously acknowledge the expiration of ACEC's service

Day L. Patterson, Esq.
American Cable Entertainment
March 30, 1999
Page 3

rights. ACEC's current tactics are shameful. While OpTel is not concerned that ACEC is further soiling its reputation and that of the franchise cable industry, OpTel believes that it brings harm to the cable industry as a whole when any member attempts to preserve assets or compete through the use of trickery and intimidation.

Please contact me should you wish to discuss any of the foregoing. However, please again be advised that OpTel intends to provide exclusive cable television services to the Property as outlined in prior correspondence to you.

Sincerely,


Scott V. Williams
Director and Assistant General Counsel

SVW:jmd
Enclosures

cc: Prince Properties Corporation (via U.S. Mail and facsimile)
10565 Civic Center Drive, Suite 288
Rancho Cucamonga, California 91730
Attn: Mr. Benjamin P. Chen and Ms. Anita Jer
Fax No.: (909) 481-6387

Mr. Jerry Fulwood (with letter enclosure; via U.S. Mail and facsimile)
Deputy City Manager
City of Rancho Cucamonga
10500 Civic Center Drive
P. O. Box 807
Rancho Cucamonga, California 91729
Fax No.: (909) 477-2846

Ken Ferree, Esq., Goldberg, Godles, Weiner & Wright
(via facsimile - (202) 429-4912)
Alexander F. Wiles, Esq., Irell & Manella, LLP
(via facsimile - (310) 203-7199)
Mike Mariott
Benjamin G. Miller
Michael E. Katzenstein, Esq.



CHARTER
COMMUNICATIONS®

COPY

VIA FAX AND REGULAR MAIL

June 9, 1999

Lorenz Menrath
Vice President Portfolio Manager
SSR APARTMENT VALUE FUND LP
A California Limited Partnership
One California Street, Suite 1400
San Francisco, California 94111-5415

RE: FALLS CREEK APARTMENTS at ALTA LOMA ("FALLS CREEK")
10655 Lemon Avenue, Alta Loma, California 91737
San Bernardino County

Dear Mr. Menrath:

This will respond to your letter of May 28, 1999. To my knowledge, this was your first attempt to notice Charter Communications under 47 C.F.R. Section 76.804 in regard to FALLS CREEK. Your letter refers to "Optel's prior written notice (contained in its letter to you dated March 30, 1999)." But there was no such letter to my attention. Your letter also refers to "Owner's prior written notice to ACEC dated May 10, 1999." But by that date ACEC no longer owned FALLS CREEK. Thus, neither letter could constitute notice to Charter Communications under 47 C.F.R. Section 76.804.

Your attempt to trigger the application of 47 C.F.R. Section 76.804 is misplaced. This regulation applies only if Charter Communications does not have a legally enforceable right to remain at FALLS CREEK against the Owners wishes. This clearly is not the case.

It is my understanding that ACEC advised your Owner's predecessor and Optel that ACEC owned and maintained the cable system at FALLS CREEK, and that ACEC had the right to remain at FALLS CREEK against the wishes of the Owner. Optel and the Owner, through its predecessor, have been on notice that it is a mischaracterization to claim that the incumbent cable operator does not own the cable system at FALLS CREEK, or does not have a legally

enforceable right to remain at FALLS CREEK.

Through its predecessors, Charter installed the television cable system more than ten years ago at its own expense and with the permission of the prior owner. Charter and its predecessors have at all times operated and maintained the cable system. The operation of the cable system has been open, notorious and continuous. Cable service has been provided to FALLS CREEK's manager's residences at the request of the owners. The owners have instructed residents at FALLS CREEK to contact Charter for cable television services. The cable system has directly benefited all property owners.

Charter, through its predecessors, substantially changed its position in reliance upon the conduct and statements of the owners. You must know that an irrevocable license exists in these circumstances. Charter's irrevocable license estops the Owner from lawfully taking those action which you now threaten.

Charter acquired ownership of the system at FALLS CREEK on May 7, 1999. FALLS CREEK is a complex that consists of approximately forty separate buildings, each of which contains approximately eight individual units. Charter has subscriber agreements with approximately two hundred thirty-three subscribers at FALLS CREEK.

FALLS CREEK was originally built as a condominium complex. The prior owners recorded conditions, covenants, and restrictions that granted cable television easements to each of the individual units. Charter, through its predecessors, entered into the individual subscriber agreements based, in part, upon these cable access easements.

The television cable between the buildings at FALLS CREEK runs through utility trenches publicly dedicated to General Telephone and Southern California Edison. The cable remains in these shares public utility easements by private arrangement between Charter and these utility companies. A cable operator has the right to use public utility easements. The property owner cannot object to the sharing of an apportionable public utility easement.

The claim of the Owner that it owns the television cable that traverses through these public utility easements clearly borders on the frivolous. Neither the Owner nor Optel may trespass against this property or convert the property for the benefit of Optel.

Moreover, the cable in these public utility easements is not "home run wiring" and is not subject to 47 C.F.R. Section 76.804.

This notifies you that Charter will consider any effort by Optel or the owner to oust Charter from FALL CREEKS as a trespass and conversion. Charter intends to protect its interests and rights at FALLS CREEK and will take all necessary and appropriate legal action to protect those rights and interests. Charter intends to continue providing cable television service to the subscribers at FALLS CREEK.

This will request that you provide written confirmation by the end of this week (Friday, June 11, 1999) that neither the Owner nor Optel will take any action to disrupt Charter's continued service to its subscribers at FALLS CREEK.

Very truly yours,

A handwritten signature in cursive script, appearing to read 'L. C. Reisner', followed by a small vertical line.

Linda C. Reisner
Vice President & Senior Counsel

cc: Mitchell Pool
Scott Williams
Jerry Fulwood

SSR

REALTY ADVISORS

June 21, 1999

Linda C. Reisner
Vice President & Senior Counsel
12444 Powerscourt Drive, Suite 100
St. Louis, Missouri 63131-3660

Re: Falls Creek Apartments, 10655 Lemon Avenue, Alta Loma, California (the "Property")

Dear Ms. Reisner,

We have received your June 9, 1999 letter regarding the Property. Needless to say, we disagree with most of your assertions in that letter.

First of all, it is true that American Cable Entertainment Company ("ACEC") advised the prior owner of the Property, Prince Alpine Villa Property, LLC ("Prior Owner") and OpTel (aka TVMAX Telecommunications, Inc.) ("OpTel") that ACEC had the right to remain at the Property against the wishes of the current owner, SSR Apartment Value Fund L.P. ("Owner"). This claim, however, was made by ACEC without ACEC or Charter Communications ("Charter") providing any reasonable basis or support for that position. Based upon your June 9th letter, your claim appears based upon some sort of adverse possession and/or reliance arguments, with either one leading to your claim that the owner of this apartment building is estopped from ever switching cable providers in its own building. Such a claim of right to occupancy by ACEC and/or Charter "clearly borders on the frivolous," to borrow a quote from your own letter.

As a point of fact, while the Property may have originally been conceived as a condominium complex, none of the units ever were sold, and it has been and is still being operated by a single owner as rental apartments. While we appreciate the fact that a cable operator has the right to use public utilities easements, we cannot understand how, from that fact, you contend that the owner of the Property cannot designate a new cable provider.

Simply stated, the Prior Owner and OpTel advised ACEC of the Prior Owner's intent to terminate ACEC's cable services at the Property. Certainly, the owner of this apartment building can designate the cable provider(s). We trust that ACEC has kept you informed of this matter during the pendency and prior to the completion of your transaction with ACEC. To date, however, we have received no reasonable or convincing evidence that ACEC or Charter has a right to remain as the cable provider to the Property against the wishes of the Prior Owner or the Current Owner.

If, in fact, it is true that certain television cable wiring located within certain public utility easements "is not 'home run wiring' and is not subject to 47 C.F.R. Section 76.804," you cannot extrapolate from that an irrevocable right to provide cable services to the Property, apparently for perpetuity. Of course, if Charter or ACEC has any reasonable evidence supporting this irrevocable right (presumably until the end of time) we would be happy to review it.

Obviously, we cannot provide the written confirmation that you requested. We fully expect Charter to protect its legal rights and interests, and we trust you will not be surprised to learn that, as Owner of the Property, we too intend to exercise and enjoy all of our rights of ownership, including the right to designate a cable provider for our Property and terminate ACEC's/Charter's services according to the notices previously forwarded to ACEC and you.

Given the polarity of our viewpoints and your implicit refusal to enter into good faith negotiations with OpTel for an orderly transition of cable services consistent with the Federal Communications Commission rules on the subject and pursuant to our notice(s) to you, perhaps our time would be better spent discussing an appropriate means of dispute resolution.

Sincerely,

SSR APARTMENT VALUE FUND L.P., a
California limited partnership

By SSR AV INC., a Delaware corporation,
its General Partner

By


Lorenz Menrath

Vice President, Portfolio Manager

cc: Herman H. Howerton, Esq.
Neil Lansing, Esq.
Anita Jer
Mitchell Poole, Esq.
Scott V. Williams, Esq.